

LTMS
Environmental Work Windows
INFORMAL CONSULTATION PREPARATION PACKET

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Draft Version 1.4



Table of Contents

<u>Section</u>	<u>Page</u>
Introduction	3
How Consultation Works	3
Herring Waiver Program	5
Scope	5
Process Flowchart	6
Recipients	7
Timeline/Response	7
Technical Assistance	7

Attachment 1 – Environmental Work Windows for San Francisco Bay
Attachment 2 – List of Agencies Responsible for Endangered Species
Attachment 3 - Project Information Form for Informal Consultation

INTRODUCTION

In 1999, under the authority of the Federal Endangered Species Act (FESA), NOAA Fisheries and the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG), under the California Endangered Species Act (CESA), completed a programmatic consultation for the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) Management Plan. NOAA Fisheries, USFWS and CDFG concluded that the LTMS program was not likely to jeopardize the continued existence of listed species under their jurisdiction. The respective biological opinions provided an incidental take statement which authorized the take of listed species which may inadvertently occur during dredging and dredged material disposal activities that adhere to the environmental work windows set forth in the LTMS Management Plan (Figures 3.2 and 3.3 and Appendix F). Therefore, permitted dredging activities that conform to the Environmental Work Windows can be completed without the need to consult with the resource agencies under the FESA and the CESA.

Any project proposing to conduct dredging activities outside of the LTMS environmental work windows is required to undertake either informal or formal consultation with the appropriate resource agencies (NOAA Fisheries, USFWS, and CDFG). Consultation is required so the agencies can consider the potential adverse effects from dredging and disposal to listed species or designated critical habitat. When requested by the applicant, the United States Army Corps of Engineers (USACE) will initiate either informal or formal consultation for the project with the appropriate resource agency. In many cases, when a species is listed by both the State and the Federal Government, the CDFG would work with the federal agencies to find concurrence through a consistency determination. If the species of concern is not a federally listed species, but a California State endangered species or species of concern, the CDFG must be contacted by the applicant directly. (See list of federal and state species in Attachment 2). If a state endangered species would be adversely affected by the project, then a CDFG 2081 permit is required.

HOW CONSULTATION WORKS

When an applicant proposes to dredge or dispose of dredged material outside of the environmental work window the applicant should request that the USACE initiate consultation. As a result of this request, the USACE reviews the project for potential impacts on listed species and designated critical habitat. If the USACE is able to determine that this project may affect, but is *not likely to adversely affect* the listed species or adversely modify designated critical habitat, the USACE will request that the appropriate resource agencies (NOAA Fisheries, USFWS, CDFG) concur with this determination. If the resource agencies concur with this determination, then the project can be completed within the parameters

of the determination. Remember if the project affects a State endangered species only, CDFG must be contacted directly by the applicant for further direction and possibly permitting.

If the resource agencies do not concur, or the USACE is unable to make a determination of *not likely to adversely affect* the listed species or adversely modify designated critical habitat, then consultation between the USACE and the resource agencies will continue either as an informal or formal consultation. Informal consultation often requires some modification of the dredging project or planned period for the dredging/disposal. This process is initiated when the USACE (through information provided by the applicant) provides a complete package of information to the resource agencies, NOAA Fisheries or USFWS, or the applicant provides information to the CDFG.

In cases where listed species or designated critical habitat are present, incorporation of measures designed to avoid or minimize adverse affects may enable dredging and disposal outside the work windows. If the resource agency can concur with the USACE's determination or make modifications to the project that will likely reduce potential impacts, the resource agency will write a letter formalizing the determination of not likely to adversely affect listed species or adversely modify designated critical habitat. Although not required by regulation, the agency will attempt to respond with this letter within 30 days of receiving a complete package of necessary information.

If the resource agency does not concur, and instead determines that listed species or critical habitat may be adversely affected by the dredging or disposal activity, then the agency may request more information, or require formal consultation. If a project requires formal consultation then the resource agency will develop a Biological Opinion for the project, which will provide the authority for (1) the incidental take of listed species (for CDFG this would likely be in the form of Fish and Game Code Section 2081 permit); (2) provide measures designed to avoid or minimize adverse effects; (3) or issue a jeopardy opinion. Federal regulations allow 135 days to complete this form of consultation. If a biological opinion is required, is likely that the CDFG would work with the federal resource agencies involved in the its development, and then adopt the biological opinion through a consistency determination process. For further information on the formal consultation process please contact the USACE or the resource agencies.

For projects that are located in an area where State species of special concern occur, as in the case of Central Bay and herring, the applicant must contact the Department of Fish and Game directly.

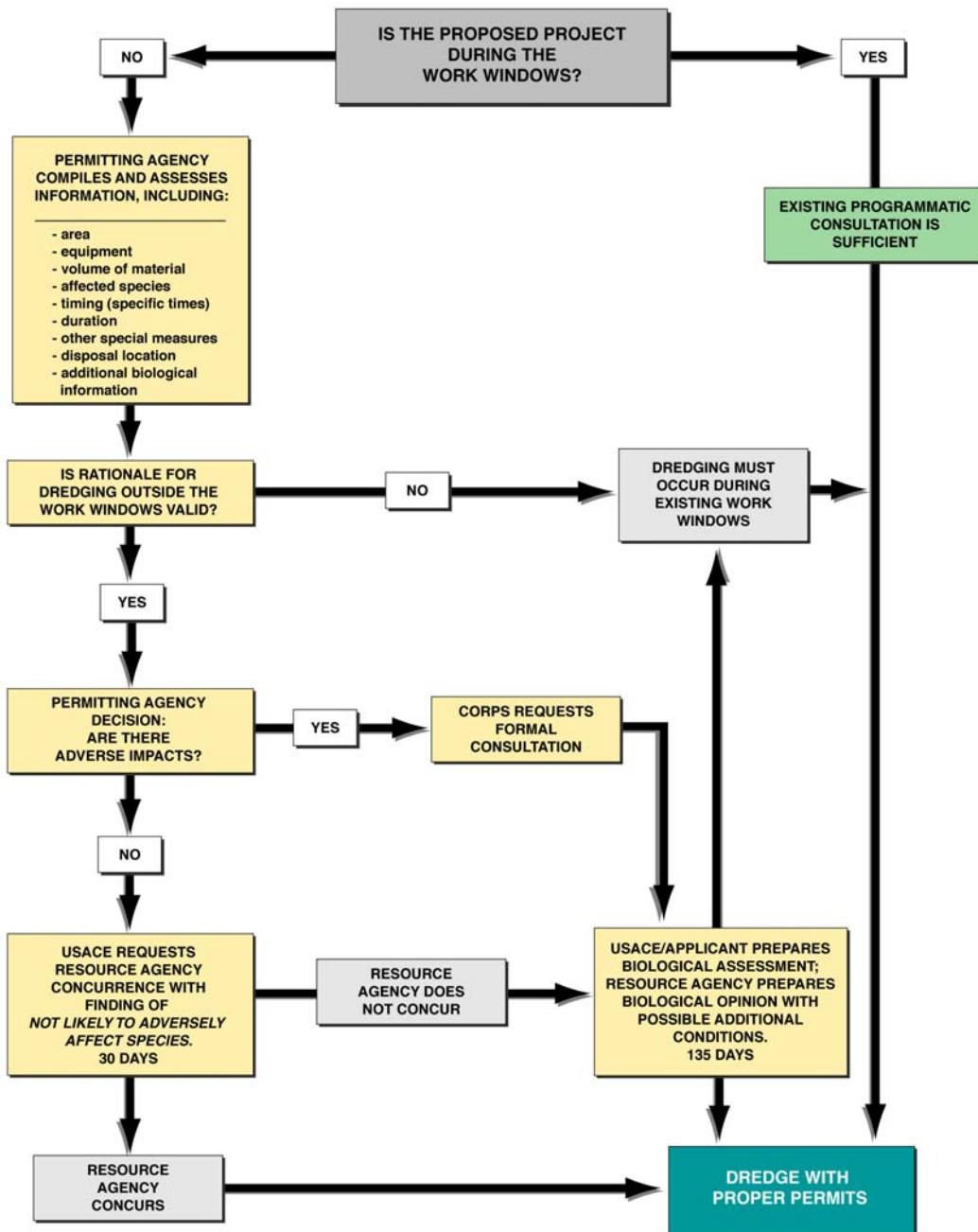
HERRING

The Pacific Herring is considered a species of special concern by the CDFG because they are an important forage fish for many marine species. San Francisco Bay serves as California's principle spawning ground for Pacific herring. Additionally, there is an active herring fishery in the Bay. Therefore, as shown in the LTMS Work Windows Chart (attached), there is a three month period when dredging cannot occur within the central portion of San Francisco Bay without a waiver from the CDFG. This period is from December 1st through the end of February in any year. Dredging projects that are geographically located in the area of the herring restriction, should be planned to occur during the remaining work window period. In the event that an emergency situation arises (i.e., unexpected shoaling that causes a navigational hazard), or a project needs to extend into December due to unforeseen circumstances, a waiver can be requested. If a waiver is granted, it may include requirements that certain protocols be followed such as having a trained observer on board and cessation of dredging activities should a herring spawning event occur in the vicinity of the project. If the project sponsor finds that a waiver may be necessary, he/she is encouraged to contact the CDFG directly. Contact with CDFG should occur as early as possible. The attached consultation form may be used to provide information to the CDFG as well the federal agencies. Because the regulatory agencies (BCDC and the USACE) will also need to approve an extension into the restricted period, it is helpful to cc, both BCDC and the Corps in this process.

SCOPE

The purpose of this document is to provide a template for preparing a thorough compilation of information to be used in the **informal consultation process**. The goal is to provide all of the information needed by the USACE and the appropriate resource agencies to make an informed and timely decision regarding your project. While this packet will guide the applicant in the preparation process, it is always possible that more information other than what is requested here will be needed on the proposed project.

Consultation Process Flowchart



RECIPIENTS

The USACE has the responsibility of reviewing and submitting the prepared informal consultation package to the appropriate federal resource agency. It is in the applicant's best interest to provide as much information as possible to the USACE office. However, to precipitate the most timely response, it is advisable to submit an additional copy to the Resource Agency Representative at the same time you submit it to the USACE.

Contact:

Clyde Davis
US Army Corps of Engineers,
333 Market Street, 8th Floor
San Francisco, CA 94105
(415)977-8449
Clyde.R.Davis@spd02.usace.army.mil

Gary Stern
NOAA Fisheries
777 Sonoma Avenue
Santa Rosa, CA 95404-4731
(707)575-6060
Gary.Stern@NOAA.gov

Ryan Olah
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916)414-6639
ryan_olah@fws.gov

George Isaac
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, CA 93940
(831) 649-2813
gisaac@dfg.ca.gov

Brenda Goeden
San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111
(415)352-3623
Brendag@bcdcc.ca.gov

TIMELINE/RESPONSE

A. USACE/NOAA/USFWS:

Once the USACE submits the consultation request, the timeline for review of an **informal** consultation from the resource agency is usually less than 30 days (as a courtesy). **Formal** consultation can take as long as 135 days. It is anticipated that the USACE will receive one of the following responses from the resource agencies and will pass the response on to you:

1. A letter of concurrence
2. A request for more information
3. A letter of non-concurrence and the initiation of the formal consultation process.

B. CDFG:

Once you have initiated contact with the California Department of Fish and Game, they will contact BCDC & the USACE directly.

TECHNICAL ASSISTANCE

Each project, project location and affected species are unique, and will be evaluated on an individual basis. In order to best prepare for the informal consultation, you are advised to seek technical assistance and input from the appropriate Resource Agency.

The following individuals can be contacted for technical assistance:

NOAA Fisheries

David Woodbury- (ESA/EFH/MMPA) (707) 575-6088

David.P.Woodbury@noaa.gov

Brian Mulvey - (EFH) (707) 575-6056

Brian.Mulvey@noaa.gov

US Fish and Wildlife Service

Ryan Olah – (916)414-6639

ryan_olah@fws.gov

Dan Buford - (Birds & Mammals) (916) 414-6625

Daniel_Buford@fws.gov

California Department of Fish and Game

George Isaac - DFG (831) 649-2813

gisaac@dfg.ca.gov

ESA = Endangered Species Act

EFH = Essential Fish Habitat

MMPA = Marine Mammal Protection Act

Attachment One Environmental Work Windows Dredging Chart

Site	Species	Jan 1-15	Jan 16-31	Feb 1-15	Feb 16-28	Mar 1-15	Mar 16-31	Apr 1-15	Apr 16-30	May 1-15	May 16-31	Jun 1-15	Jun 16-30	Jul 1-15	Jul 16-31	Aug 1-15	Aug 16-31	Sep 1-15	Sep 16-30	Oct 1-15	Oct 16-31	Nov 1-15	Nov 16-30	Dec 1-15	Dec 16-31
SF Bay Bridge to Sherman Island	Steelhead Trout																								
	Chinook Salmon Juveniles																								
Carquinez Bridge to Collinsville	Sacramento Splittail																								
	Delta Smelt																								
	Longfin Smelt																								
Pinole Shoal Suisun Bay Channel	Chinook Salmon (Adults)																								
San Pablo Bay	Longfin Smelt																								
North San Pablo Bay, Napa & Petaluma Rivers	Sacramento Splittail (Juveniles)																								
Napa & Petaluma Rivers, Sonoma Creek	Steelhead Trout																								
San Pablo Bay & South SF Bay	Western Snowy Plover																								
North SF Bay & San Pablo Bay shallow berthing areas	Dungeness Crab																								
Richardson Bay, North & South Bay	Pacific Herring																								
Waters of Marin County from the Golden Gate Bridge to Richmond-San Rafael Bridge	Coho Salmon																								
Central SF Bay	Steelhead Trout																								
	Pacific Herring																								
Berkeley Marina to San Lorenzo Creek within 1 mile of coastline	California Least Tern																								
South of Highway 92 Bridge (San Mateo-Hayward)	California Least Tern																								
In Areas with Eelgrass Beds	California Least Tern																								
Baywide in Areas of Salt Marsh Habitat	California Clapper Rail																								
Baywide within 250 feet of Salt Marsh Habitat	California Clapper Rail																								
In and Adjacent to Salt Marsh Habitat	Salt Marsh Harvest Mouse																								
Within 300' of known roost site	California Brown Pelican																								

For more detailed information, see Appendix F of the LTMS Management Plan or the LTMS EIR/EIS

WORK WINDOW

CONSULTATION
REQUIRED

Attachment 2
Responsible Agencies
State and Federally Listed Species and
Species of Special Concern

Species (Common Name)	Consulting Agency
Steelhead Trout	NMFS
Coho Salmon	NMFS, CDFG
Chinook Salmon (listed runs)	NMFS, CDFG
Delta Smelt	FWS, CDFG
Pacific herring	CDFG
Least Tern	FWS, CDFG
Western Snowy Plover	FWS, CDFG
Dungeness Crab	CDFG
California Clapper Rail	FWS
Salt Marsh Harvest Mouse	FWS, CDFG
California Brown Pelican	FWS, CDFG

Attachment 3
Informal Consultation Form

The following information is needed to assist the USACE in requesting consultation on your project. While these questions cover most of the information needed, individual projects may require additional information to complete consultation.

1. Area

Name of Project: _____

USACE Permit Number: _____

Town Project is in: _____

County Project is in: _____

Calculated Area of project: _____

Project Grade w/over depth: _____

Provide a Map of project

2. Equipment

Type of Dredge: _____

Capacity of Bucket:
(If Clamshell) _____

Cutter Head Velocity (FPS):
(If Cutter Suction Dredge) _____

Pump Power:
(If Hydraulic Hopper) _____

Disposal Equipment Description:
(Dump Scow, Flat Barge, Pipeline?) _____

Disposal Equipment Capacities:
(Scow Capacity) _____

3. Volume of Material _____
(How much material will be dredged? Include over dredge depth volume)

4. Disposal Location/Method_____

5. Has the DMMO reviewed and found the material suitable for aquatic disposal, or if not what are the issues?

6. Duration/Timing

Proposed Projected Start Date:_____

Proposed Projected Completion Date:_____

Working Days:_____

Working Hours:_____

7. Affected Species

(See Attached LTMS Windows Chart, DMMO or NOAA website)

8. Additional Biological Information if available.

9. Reasons why this activity necessitates dredging outside of the work window._____

10. Other Special Measures

(Some special measures may include: the ability to change disposal sites, use of silt curtains or environmental buckets, or possibly blocking species entry into the project area. Measures may be very site specific, but would normally include better technology or methodology; disposing of material further downstream, upland would be even better; this is where you brainstorm and come up with site specific ideas, each project is slightly different.)

11. Has prior consultation occurred on this project? Yes or No? If yes, what year and with what result?
